

STATEMENT OF THE
NATIONAL BORDER PATROL COUNCIL
OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE
SUBCOMMITTEE ON MANAGEMENT, INTEGRATION, AND OVERSIGHT
COMMITTEE ON HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES

CBP AND ICE:
DOES THE CURRENT ORGANIZATIONAL STRUCTURE
BEST SERVE U.S. HOMELAND SECURITY INTERESTS?

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The National Border Patrol Council, which represents approximately 10,000 front-line Border Patrol employees, appreciates the opportunity to share its views and concerns regarding the organizational structure of the Department of Homeland Security.

The Homeland Security Act of 2002 merged 22 diverse agencies within the Executive Branch of the Federal Government with the goal of fostering better coordination and cooperation among them in order to better protect the United States against the threat of terrorism. Three years later, it is appropriate to evaluate the effectiveness of one the more controversial after-the-fact organizational changes – the creation of two separate enforcement bureaus within the Directorate of Border and Transportation Security instead of a single bureau as originally called for in Section 442 of the Act. As contemplated therein, the Bureau of Border Security would have been responsible for coordinating and carrying out all of the functions of the Customs Service and the Transportation Security Administration, the law enforcement functions of the Immigration and Naturalization Service and the General Services Administration, and certain agricultural inspection functions of the Department of Agriculture. For reasons that were more political than practical, two bureaus were created in its place: the Bureau of Customs and Border Protection (CBP) and the Bureau of Immigration and Customs Enforcement (ICE). The legacy Customs Service management structure took control of CBP, and the legacy Immigration and Naturalization Service (I&NS) management structure took control of ICE. Although the stated rationale for the bifurcation of the enforcement functions was to allow CBP to primarily focus on enforcement at the borders and ICE to primarily focus on enforcement in the interior, it is obvious to even the most casual observer that this distinction is almost completely artificial. In order to effectively carry out their statutory missions, both of these bureaus need to be able to seamlessly operate without regard to artificially-imposed boundaries. It is now apparent that the dual structure was mainly created to allow the existing Customs and I&NS bureaucracies to survive largely intact. The survival of an existing bureaucracy

in a consolidation can be either productive or counter-productive, depending upon whether or not it is compatible with the new mission and contributes to its accomplishment. In the current structure, unfortunately, the new bureaucracies have impeded the accomplishment of the Department's anti-terrorism and other law enforcement missions. These important objectives require a high level of coordination and cooperation among all of the Department's employees. The current bifurcated structure places needless barriers between these employees and provides major disincentives for them to coordinate their efforts and cooperate with each other. In fact, the level of coordination and cooperation has decreased significantly since the consolidation.

Long before the Department of Homeland Security was even contemplated, there was a great deal of concern in Congress about the ability of the I&NS to effectively discharge its dual enforcement and service missions under a unified structure with a single chain of command. The National Border Patrol Council supported splitting the service and enforcement programs in order to enable both of them to operate at peak efficiency while at the same time facilitating coordination and cooperation between the two branches. The Council also supported the same goal under the Homeland Security Act, but did not endorse the dual split of the enforcement bureaus. It maintains that such a move was a mistake from the beginning, and should be rectified as soon as possible. Of course, merely merging these two bureaus will not cure the ills that plague them. A fundamental restructuring of every key aspect of the organization must also occur if meaningful improvements are expected.

The new consolidated structure must be fully integrated at all levels of the organization. It must not only eliminate impediments to coordination and cooperation, but must also facilitate the achievement of these goals. Such critical matters should not be dependent on the will and strength of a few high-level leaders, but must be the natural result of a well-planned organizational structure.

In order to ensure the success of the new structure, it must be carefully constructed, paying close attention to the input of employees at all levels and components of the existing bureaus. To be successful, this new structure and culture must first be embraced by the leaders at the top of all of the integrated programs, and then be filtered down to employees at all levels of the organization. The only way that this will happen is if the changes make sense to all employees and truly represent a significant improvement.

Weak links in the organizational chain should not be allowed to frustrate the accomplishment of the overall mission. For example, the current structure places all of the funding and responsibility for the detention of illegal aliens into a single bureau, even though all of the programs in both bureaus are dependent upon this resource. Allowing mismanagement and under-funding in one program to disrupt the entire operation is untenable. A proper organizational structure would ensure that all aspects of the operation are carefully planned and integrated, and that all of the resources are properly distributed to ensure that such disparities rarely, if ever, occur. Unanticipated shortfalls in one or more key areas would be compensated for by shifting funds and resources from other areas.

The chains of command and lines of authority in the new organization must be structured horizontally as well as vertically in order to ensure that all of the components seamlessly interface with each other as well as to facilitate cooperation. Currently, all of the Department's criminal investigators belong to one bureau, while all of the front-line personnel who enforce the laws pertaining to the legal and illegal entry of people and goods entering the United States belong to a different one. Under this system, there is absolutely no incentive for these employees to coordinate their investigations or to cooperate with each other. To the contrary, it actually encourages competition and isolationism.

Another factor that discourages coordination and cooperation among the Department's employees is the absence of defined career paths within the various organizational components that would allow for the easy interchange of experience and skills between them. For example, in a properly-constructed organization, criminal investigator positions and other higher-graded occupations should be selected from the ranks of entry-level occupations such as Border Patrol agents, CBP inspectors, and Immigration Enforcement agents. This would not only provide the Bureau with experienced employees who would require minimal training to perform well in these complex assignments, but would also boost morale and slow attrition among the ranks of the other occupations. Amazingly, the Department hires almost all of its criminal investigators straight out of college. This has no parallel in any other law enforcement agency in the country. Every single major police department hires its detectives from the ranks of its uniformed officers.

It would be a serious mistake to assume that the employees in the various occupations within the consolidated bureau are interchangeable and that some of these occupations should therefore be merged. Occupational distinctions should be based upon operational requirements and realistic employee expectations, not on uniformity for uniformity's sake. In addition to its over-arching mission of anti-terrorism, the Department continues to be responsible for enforcing immigration, customs, maritime, and agricultural laws. All of these laws are complicated and arcane, and it is unrealistic to expect one employee to be an expert in more than one discipline. While it is helpful for all employees to be familiar with those laws that they might encounter during the normal course of their duties, it is unwise to attempt to create a workforce of generalists rather than specialists.

The best example of this theory going awry is the "One Face at the Border" initiative undertaken by CBP shortly after its creation. While the phrase has a certain facial appeal, its underlying premise is fundamentally flawed. The complexities of the three major types of laws and

regulations that are enforced at the border virtually guarantee that no individual can become an expert in all of these areas. Efforts to homogenize the inspectors at our Nation's ports of entry will ultimately result in a workforce composed of "jacks of all trades, but masters of none." The plan to place specialists in the secondary referral areas as an adjunct to these generalists in the primary inspection areas will also prove ineffective. If the primary inspectors have insufficient knowledge of the applicable laws, they will be incapable of identifying suspicious people and cargo for referral to the secondary areas. For similar reasons, the current attempt to force all criminal investigators to handle cases involving all of the various laws within the Department's jurisdiction is also doomed to failure. Specialization must be embraced and encouraged at all levels of the organization.

Finally, it must be recognized that organizational structures in and of themselves are wholly incapable of carrying out an agency's mission – they merely facilitate the accomplishment of the mission by the agency's employees. The more skilled and dedicated the employees are, the more effectively the mission will be accomplished. Unfortunately, the Department of Homeland Security is in the process of implementing a new personnel system that will make it very difficult to recruit and retain the best and the brightest employees. Although the new rules purport to be progressive measures that will reward and encourage superior performance and hold all employees accountable, they are in fact throwbacks to the corrupt, cronyism-based nineteenth century civil service system that nearly ruined public service in this country. All employees want to be paid and treated fairly, and to have a say in the decisions that affect their working conditions. Because this new personnel system does not meet those basic needs, it will discourage highly-skilled and dedicated employees from serving their country in this vital agency.

In summary, the National Border Patrol Council strongly supports the merger of the Department of Homeland Security's two enforcement bureaus, but cautions that such a consolidation must be undertaken thoughtfully. Otherwise, it will not correct the problems that exist in the current bifurcated structure, and could actually worsen the situation. In order to be effective, the new structure must foster the coordination and cooperation that are so essential to the accomplishment of the Department's anti-terrorism and other law enforcement missions. It must also facilitate specialization in the various laws that the Department is charged with enforcing in order to maximize the odds that terrorists and weapons of mass destruction will be intercepted. Finally, it must ensure that employees are treated fairly and that their input is heeded so that the Department is able to continue its tradition of attracting the best and brightest to protect America against the threat of terrorism.